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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/075,871	02/13/2002	John C. Delo	2180.1	1152
7590	09/08/2005		EXAMINER	
Michalik & Wylie, PLLC Suite 193 704-228th Avenue NE Sammamish, WA 98074			VO, TED T	
			ART UNIT	PAPER NUMBER
			2192	
			DATE MAILED: 09/08/2005	

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/075,871	DELO ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Ted T. Vo	2192

*-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --*

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 29 June 2005.

2a)  This action is **FINAL**.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## **Disposition of Claims**

4)  Claim(s) 1-35 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 1-35 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All    b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 6/29/05.  
4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.  
5)  Notice of Informal Patent Application (PTO-152)  
6)  Other: \_\_\_\_.

#### DETAILED ACTION

1. This action is in response to the communication filed on 06/24/2005.

In view of the submitted Affidavits/declaration on 06/24/05, filed under 37 CFR 1.131 and 1.132, the rejection under 102(a) being anticipated by Kelly is withdrawn.

In view of the filing of Terminal Disclaimer on 6/24/05, double patenting rejection over the U. S. Patent No. 6,397,381 B1, is withdrawn. A new ground of rejection including new double patenting rejection is applied in this action. Accordingly, this action is non-final.

Claims 1-35 are pending in the application.

#### ***Double Patenting***

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Omum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 1, 12, 21, 26, 30, 35 are rejected under the judicially created doctrine of obviousness-type double patenting as being respectively unpatentable over claim 1 of U. S. Patent No. 6,427,227 B1. Although the conflicting claims are not identical, they are not patentably distinct from each other because:

Application's Claim 1:

receiving a request to verify that a needed resource is available to an executable software program, the needed resource comprising at least one resource needed by the program;  
determining whether the needed resource is available to the program, and if the needed resource is not available to the program,  
automatically initiating an installation procedure without manual termination of the program to make the needed resource available to the program.

US Patent's Claim 1:

receiving an indication that a resource operative to provide functionality to the application program is needed by the application program; verifying that the resource is available to the application program at an expected location;  
in response to a positive verification of the availability of the resource to the application program at the expected location, passing an existence verification to the application program; in response to a failure to verify the availability of the resource to the application program at the expected location, determining if a patch exists for patching the application program; in response to a positive determination that the patch exists for patching the application program, accessing the patch to retrieve information for applying the patch to the application program;  
installing the resource at the expected location; and applying the patch to the resource.

As per Claim 12

Similarly, Claim 12 presented in this application and US patent's claims 1 are claiming the same functionality.

As per Claim 21

Similarly, Claim 21 presented in this application and US patent's claims 1 are claiming the same functionality.

As per Claim 26

Similarly, Claim 26 presented in this application and US patent's claims 1 are claiming the same functionality.

As per Claims 30, 35

Similarly, Claims 30 and 35 presented in this application and US patent's claims 1 are claiming the same functionality, respectively.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

5. Claim 1-35 are rejected under 35 U.S.C. 102(a) as being anticipated by Gottfried Rudorfer (hereinafter: Rudorfer), "Managing PC Operating Systems with a Revision Control System", 10-1997.

Given the broadest reasonable interpretation of followed claims in light of the specification.

As per Claim 1: Rudorfer discloses,

***A computer-implemented method, comprising:***

***receiving a request to verify that a needed resource is available to an executable software program*** (See p. 79, See p. 80, the perl script does 1-8 steps) ***the needed resource comprising at least one resource needed by the program*** (Figure 1, 'Install Service' pointing to registry and File system);

***determining whether the needed resource is available to the program*** (See p. 82, both Linux or Windows 95 are performing parameter configuration. For example, in Windows 95, key ...\\Enum\\ISAPNP\\ is needed resource, or see Table 1), ***and if the needed resource is not available to the program*** (We generate, for example, the reference shows the string in the registry Key is generated (P. 82, section Windows 95)), ***automatically initiating an installation procedure without manual termination of the program to make the needed resource available to the program*** (See the whole reference, where the purpose of this reference, is addressed in the motivation (p. 79), and particularly the perl script and 8 steps (p. 80)).

As per Claim 2: Rudorfer discloses, *The method of claim 1 wherein the resource comprises a registry key, and wherein determining whether the needed resource is available further comprises, querying a registry.* (See Table 1. Refer to registry of Windows 95, see regedit).

As per Claim 3: Rudorfer discloses, *The method of claim 1 wherein the resource comprises a file, and wherein automatically initiating an installation procedure further comprises, installing the file at a storage location accessible to the executable software program* (See p. 80, refer to user's computer, for example, see motivation, Linux software on the PC).

As per Claim 4: Rudorfer discloses, *The method of claim 1 wherein if the needed resource is available to the executable software program, returning existence verification data to the executable software program* (See p. 80, the perl script, Repair file system, step 6, performed by the perl script).

As per Claim 5: Rudorfer discloses, *The method of claim 4 wherein returning existence verification data comprises, returning a location of the resource to the executable software program* (See p. 80, include 8 steps and refer to root directory; see directory of Client in Figure 1).

As per Claim 6: Rudorfer discloses, *The method of claim 4 wherein returning existence verification data comprises, returning a resource path* (See p. 80, include 8 steps and refer to root directory, or see table 1, are resource path).

As per Claim 7: Rudorfer discloses, *The method of claim 1, wherein receiving a request to verify that a needed resource is available to an executable software program includes receiving a parameter identifying the resource* (See p. 80, include 8 steps and refer to root directory, or see Implementation of Upload Programs, and see p. 82, table 1, and sec. Linux and Windows 95).

As per Claim 8: Rudorfer discloses, *The method of claim 7, wherein determining whether the needed resource is available comprises, accessing a database based on the parameter identifying the resource to determine an expected location of the needed resource* (See p. 80, refer to root directory, and further see p. 82, table 1, particularly sec. Windows 95, the HKEY\_LOCAL\_MACHINE\...).

As per Claim 9: Rudorfer discloses, *The method of claim 8 wherein determining whether the needed resource is available to the executable software program further comprises, attempting to access the resource at the expected location* (Refer sec. Window 95, PC using the regedit).

As per Claim 10: Rudorfer discloses, *The method of claim 1 wherein automatically initiating an installation procedure comprises, prompting the user to provide a source of the needed resource* (See p. 79, sec Motivation, and see 8 steps in p. 80).

As per Claim 11: Rudorfer discloses, *A computer-readable medium having computer-executable instructions for performing the method of claim 1* (refer to the rationale address in Claim 1).

As per Claim 12: Rudorfer discloses, *In a computing environment, a system comprising: an executable software program including a first set of executable code and a second set of executable code, the second set of executable code* (installed file system, operating system and application (p.79: Motivation) *comprising at least one resource that is needed to provide functionality to the first set of executable code; and*  
*an installer program* (p.80, the perl script and 8 steps) *connected for communication with the first executable software program to receive a request for installation information of the second set of executable code, the installer program configured to determine the installation information, and when the installation information indicates that the set of executable code is not installed, the installer program further configured to automatically install the second set of executable code to make the second set of executable code available to the first set of executable code* (refer to repair file).

The Claim has the limitation corresponding to the steps of Claim 1. See rationale addressed in Claim 1 above. It should be noted that the limitations executable software program and installer program are mere code. The functionality of reparation and installation shown in Rudorfer has the type of software performance.

As per Claim 13: Rudorfer discloses, *The system of claim 12 wherein the first set of executable code comprises a product, and wherein the second set of executable code corresponds to a feature of that product.* See p. 79, sec. Comparison with other tools; see Figure 1, where the Server install a product such as Linux software or Microsoft Windows 95, from a repository to the Client PC.

As per Claim 14: Rudorfer discloses, *The system of claim 13 wherein the product includes a package file that describes at least one relationship between the feature and the at least one resource* (See p. 79, sec. Comparation with other tools, Implementation; see Figure 1).

As per Claim 15: Rudorfer discloses, *The system of claim 12 wherein the first set of executable code comprises an application program, and wherein the second set of executable code comprises a component including a collection of resources for that application program* (See whole reference. Refer Linux software or Microsoft Windows 95 as product and file system (Figure 2) as a collection of resource).

As per Claim 16: Rudorfer discloses, *The system of claim 12 wherein the first set of executable code provides a token that includes data identifying the second set of executable code in the request for information received by the installer program* (See p. 81-82, Implementation of the Revision Control System, Check-in, Check-out, Registry within User privileges; see sec. Windows 95).

As per Claim 17: Rudorfer discloses, *The system of claim 12 wherein the token corresponds to a keypath, and wherein the installer program determines the installation information by checking for the existence of a file at a location based on the keypath* (See p. 80, ; 8 steps; see p. 82, sec. Windows 95, and table 1, sec. Check-in, check-out, etc.;).

As per Claim 18: Rudorfer discloses, *The system of claim 12 wherein the second set of executable code comprises a component comprising a collection of resources, one of the resources comprises a key file, and wherein the first set of executable code provides data identifying the key file in the request for information received by the installer program* (Refer to file system objects, and see sec Windows 95).

As per Claim 19: Rudorfer discloses, *The system of claim 18 wherein the key file comprises a file system file, and wherein the installer program determines the installation information of the second set of executable code by looking for the existence of the key file at a storage location* (See installation script and 8 steps in p. 80).

As per Claim 20: Rudorfer discloses, *The system of claim 18 wherein the key file comprises registry data, and wherein the installer program determines the installation information based on the registry data* (Refer to Registry, and see Figure 1, and Table 1).

As per Claim 21: Regarding, *A computer-readable medium having computer-executable instructions, comprising:*

*receiving a resource identifier comprising at least one argument from a first set of executable code, the resource identifier being associated with a second set of executable code including at least one resource that provides functionality to the first set of executable code;*  
*accessing a database based on the resource identifier to retrieve an expected location of at least part of the second set of executable code; and verifying the existence of the at least part of the second set of executable code at the expected location.*

The Claim has the limitation corresponding to the steps of Claim 1. See rationale addressed in Claim 1 above.

As per Claim 22: Rudorfer discloses, *The computer-readable medium of claim 21, further comprising, verifying the existence of the at least part of the second set of executable code at the expected location, and if verification is negative, installing the second set of executable code at the expected location* (See 8 steps, refer to repair in the step 3).

As per Claim 23: Rudorfer discloses, *The computer-readable medium of claim 21, wherein the resource identifier comprises a component code* (Refer to HKEY, the path of file system objects).

As per Claim 24: Rudorfer discloses, *The computer-readable medium of claim 21, wherein the resource identifier comprises a feature identifier which identifies at least one portion of the first set of executable code* (Refer to HKEY, the path of file system objects).

As per Claim 25: Rudorfer discloses, *The computer-readable medium of claim 21, wherein accessing the database to identify the expected location of the resource includes querying the database based on data in the resource identifier* (See file system objects, Figure 2).

As per Claim 26: Regarding, *In a computing environment, a system comprising, executable code having a feature, the feature comprising a component including a key file which supports the feature; and an installer for repairing the executable code if the key file becomes unavailable to the executable code, the installer:*

*(a) receiving from the executable code a request for a path to the key file;*

- (b) identifying an expected location for the key file in the computing environment;
- (c) attempting to verify the existence of the key file at the expected location in the computing environment; and
- (d) in response to a failure to verify the existence of the key file at the expected location, automatically initiating an installation of the key file to the expected location without manual termination of the executable code.

See rationale in Claim 1.

As per Claim 27: Rudorfer discloses, *The system of claim 26, wherein in response to successfully verifying the existence of the key file at the expected location, the installer provides data that identifies the expected location to the executable code* (Refer to Registry).

As per Claim 28: Rudorfer discloses, *The system of claim 26, wherein the key file corresponds to a resource of a component* (Refer to keys used in Registry, for example table 1, the HKEY\_...).

As per Claim 29: Rudorfer discloses, *The system of claim 28, wherein the component corresponds to a feature* (Refer to keys used in Registry, for example HKEY\_..., and its path/subclass).

As per Claim 30: Rudorfer discloses, *In a computer system, a method comprising, receiving a call, the call including a resource identifier; and in response to receiving the call: 1) determining if a resource corresponding to the resource identifier exists at an expected location, and if the resource does not exist at the expected location, automatically initiating an installation of the resource to the expected location; and 2) returning information corresponding to the existence of the resource at the expected location.*

Claim has the functionality corresponding to the limitation of Claim 1. See Rationale as addressed in Claim 1 above.

As per Claim 31: Rudorfer discloses, *The method of claim 30 wherein returning information corresponding to the existence of the resource at the expected location comprises returning a path to the expected location.* See Rationale as addressed in Claims 4-5 above.

As per Claim 32: Rudorfer discloses, *The method of claim 30 wherein determining if the resource corresponding to the resource identifier exists includes querying a database to obtain the expected location of the key file.* See Rationale as addressed in Claim 2 above.

As per Claim 33: Rudorfer discloses, *The method of claim 32, wherein if the expected location cannot be found by querying the database, automatically initiating an installation of the resource to a location and adding that location to the database as the expected location.* See Rationale as addressed in Claim 2 above.

As per Claim 34: Rudorfer discloses, *The method of claim 30 wherein the resource identifier corresponds to a key file, and wherein determining if a resource corresponding to the resource identifier exists at an expected location comprises obtaining a path to that key file* (Refer to Registry structure).

As per Claim 35: Rudorfer discloses, *A computer-readable medium having computer-executable instructions for performing the method of claim 30.* See Rationale as addressed in Claim 1 above.

### **Conclusion**

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ted T. Vo whose telephone number is (571) 272-3706. The examiner can normally be reached on 8:00AM to 5:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tuan Q. Dam can be reached on (571) 272-3694.

The facsimile number for the organization where this application or proceeding is assigned is the Central Facsimile number **571-273-8300**.

Any inquiry of a general nature or relating to the status of this application should be directed to the TC 2100 Group receptionist: 571-272-2100. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for

unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Ted T. Vo  
Primary Examiner  
Art Unit 2192  
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